

FACILITATION, CONFLICT MANAGEMENT & DISPUTE RESOLUTION

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Facilitation	Capacity Building
Mediation	Consensus Building
Conflict Assessment	International Programs
Settlement Counsel	Dispute Resolution Training
Arbitration	Project Management and Evaluation

Joe McMahon has worked in decision-making and conflict management/resolution since 1991, and served as a legal counselor/trial lawyer in the preceding thirteen years. In conflict management and resolution, he has been a mediator, facilitator, settlement consultant, arbitrator, lecturer and trainer. Joe's special interests in conflict management and resolution are (1) improving communication, (2) ensuring that the power of resolution remains with the parties, (3) developing better resolution options, (4) using analytic approaches to facilitation and (5) the avoidance of decision-making errors. In commercial conflict resolution, he works to avoid the common "settlement culture" of positional bargaining by moving to processes centered on improving the participants' options. Prior to working in conflict management, Joe was a registered professional engineer working on water disputes, inter and intra-state water allocation, hydrology and the design and construction of water supply, river improvement, parkways, drainage and irrigation projects.

Joe received his initial mediation training in 1991 at the Center For Mediation in Law, and since that time has devoted his principal energies to the field of conflict management and resolution. He has facilitated or mediated multi-party public, environmental, organizational, and commercial matters. Joe has also worked with several international agencies and organizations in managing projects in developing countries, and has facilitated consensus building exercises in Asia and Africa.

Joe has assisted parties in addressing complex, challenging and sometimes highly contentious issues regarding regulations, strategic planning, communications, technology, natural resources, transportation, water use, environmental issues, board/staff relations, land use, transportation and commercial litigation. His consultations and projects include public, environmental disputes and inter-governmental (national, state and county) disputes over public land, fire protection, Clean Water Act, trespass claims, river basin water allocation and transportation/planning disputes among communities. In legal disputes, he has extensive experience in multiple roles including as an arbitrator, mediator, special master and trial/appellate lawyer.

Among Joe's international projects are efforts in East Africa, where he facilitated the formation of a new partnership among East African Nongovernmental Organizations providing water and aid in urban slums with NGOs from Malawi, Kenya, Tanzania, Uganda and Zambia (November, 2002 to date), and Manila, where he assisted water and environmental professionals in South East Asia building consensus around the use of certification standards for water and waste water treatment (February, 2003). Joe has also overseen the management of water and environmental

projects in Viet Nam, and five East African countries, and consulted on the use of multi-sector partnerships to provide water to low income communities.

CASE & PROJECT LIST

INTERNATIONAL

Facilitator, organizational consultant, Water For People – Bolivia, Water For People – Uganda, 2009.

Research, Ministry of Foreign Affairs, The Netherlands, *Typologies of collaboration*, 2009.

Facilitator and researcher, INTRAC, Effects of Counterterrorism laws and practices on nonprofits, 2005-2007.

Facilitator, Water For People, Program Strategy, 2006/07.

Facilitator, Eastern and Central African Peri-urban Water/Sanitation Partnership, 2005..

Facilitator, Research on the Effect of Counter terror Laws on International NGOs, 2005.

Research Team member, *Building Partnerships for Development*, London, 2004.

Program Planning Consultant to Water For People, 2004.

Founder, Inter-Mediation.org 2004

Consultant to Community Integrated Development Initiatives (a Ugandan NGO), 2004-05.

Co-facilitator, USEPA & Water For People Workshop, Tanzania, November, 2002.

Workshop Co-facilitator, United States Asia Environmental Partnership, Manila, 2003.

Grant applications and program development – various NGOs.

Program co-designer, *Water For Africa*, 2000-2002, a joint USEPA and Water For People Program.

Facilitator, Water For People-Province of Thua Thien, Viet Nam, School Water & Sanitation Program, 1994-1999.

Co-designer, Water For People, Ministry of Construction, Colorado State University, Urban Drainage Workshop,

Regional Conference on Reform of the Water Sector, Kampala, Uganda, 2001.

International related presentations, articles or associations:

- Co-author (with Alan Fowler), “A Role for Partnership Facilitation? Negotiating Goodbye While Saying Hello”, *Alliance*, Vol 9, No 2, June 2004
- Program Committee Chair, Water For People, Denver, CO., USA, 2001-2003.
- Committee Chair, Program Effectiveness Committee, Water For People, Denver, CO., 1997-1999.
- Member, CPR Institute (NY), US-China Business Mediation Panel.
- Presenter, *Water For Africa*, Graduate School of International Studies, Univ. of Denver, Nov., 2003
- Presenter, *Water Issues in Viet Nam*, American Water Works Association, Annual Conference, Toronto, 1997.

- Facilitator, *Water Drainage Issues in Viet Nam*, Ha Noi, 1997 (joint effort of Water For People and Colorado State University).
- Coordinator of *Source Water Protection Conference* in Hue, Viet Nam, 1998.

ENVIRONMENTAL QUALITY, PUBLIC LANDS

Mediator, Site owner and class action plaintiffs on ground water pollution litigation, 2013.

Facilitator among EPA and responsible party on CERCLA remediation planning for a mine site, 2013.

Mediator among EPA and responsible party on RCRA matters, 2013.

Mediator among private parties of a citizen initiated Clear Air lawsuit, 2012.

Facilitator, EPA, State of New Mexico, Chevron Mining and communities, on technical design process for remediation of Molycorp/Questa mines site, 2011-12.

Co-facilitator, Department of Interior Task Force developing multisectoral partnerships in support of the *America's Great Outdoors* initiative, 2012.

Facilitator to assist creation of Citizens Advisory Task Force, EPA, State of Colorado, and communities, 2011-12.

Facilitator, Edwards Aquifer Restoration Implementation Program, 2009. Facilitating the Edwards Aquifer RIP steering committee in development of a habitat restoration program.

Facilitator, Colorado – EPA nonpoint source workshop, 2009.

Facilitator, California Gulch, EPA, Colorado, Lake County and Leadville, 2007-2009.

Co-Facilitator, Missouri River Restoration Implementation Committee (COE, FWS, EPA, NPS, States of the Missouri River Basin and various stakeholders), 2005.

Facilitator, Lowry Landfill Superfund site (EPA, State of Colorado, City of Denver and Waste Management Inc.), 2004-05.

Facilitator-mediator, Rocky Mountain Arsenal, (US Army, State of Colorado, citizen groups) 2002.

Mediator, Jarbidge/Elko Nevada Public Lands Litigation, (State of Nevada, Elko County, U.S. Department of Justice, and others) 2001. .

Mediator, Superfund PRP Cost Allocation Dispute, Wyoming (parties confidential), 2003

Arbitrator, Mining Agreement dispute, 2003-4

Legal counsel, Wyoming, Public-private land disputes (various land owners and U.S. Department of Justice).

Environmental related presentations or associations:

- *Approaches for Managing Large Multi-party Cases When Things Start to Go Wrong*, co-facilitator, Environmental Conflict Resolution 2008, Tucson, May 2008.
- *Assessing Environmental ADR and Improving Your Own Conflict Skills*, Annual NEPA Conference, Denver, December 2007.
- *Using Conflict Assessments in Environmental Conflict Resolution*, 4th Annual NEPA Conference, Denver, January 2007.
- *Endangered Species Act Meets Environmental Conflict Resolution*, 11th Annual ESA Conference, Tucson, November, 2005.

- National Roster of Environmental Conflict Resolution and Consensus Building Professionals, U.S. Institute for Environmental Conflict Resolution, Tucson, AZ.
- Environmental Panel, CPR Institute for Dispute Resolution, N.Y., N.Y.
- *Interest-based Bargaining in Environmental Disputes*, Rocky Mountain Association of Environmental Professionals, May 2001.
- *Ethics in Environmental Negotiation*, Colorado Bar Assn., Environmental Law Section, December 1999.
- *Interest-based Bargaining in Environmental Disputes*, Colorado Bar. Assn., Environmental Law Section, January 2001.
- *Mediation Styles*, U.S. Institute for Environmental Conflict Resolution, May 2000.
- *Guiding Institutions and Organizations Through Mediation: A Hypothetical Based on the Snake River Adjudication*, panel facilitator, U.S. Institute For Environmental Conflict Resolution program on ADR and Natural Resources/Environment, May 2000.
- Co-author with E.M. Thiessen, *Beyond Win-Win in Cyberspace*, discussion of resolution of environmental disputes using "negotiation support systems" and facilitation, *The Ohio State Journal of Dispute Resolution* (15 Ohio S. J. of Disp. Res. 643 [1999]).

WATER

Mediator, Site owner and class action plaintiffs on ground water pollution litigation, 2013 (Oklahoma).

Mediator, irrigation ditch right of way dispute, 2011.

Facilitator, Edwards Aquifer Restoration Implementation Program, 2009.

Mediator, 2009, construction activities on repairs to waste water treatment plant.

Conflict assessment, reservoir operational dispute, 2007.

Lead Facilitator, Comprehensive Aquifer Management Plans, Rathdrum Prairie and Treasure Valley, Idaho, 2009.

Mediator, dispute over aquifer pollution during coal bed methane drilling. Mediator, disputes over operation of water system, 2007.

Facilitator, recreational in channel diversion case, 2007.

Mediator, dispute over water rights and usage, 2007

Mediator, dispute over ditch company right of way,

Facilitator, Development of water and conflict strategy, 2006

Mediator, reservoir usage dispute, 2006

Co-Facilitator, Missouri River Restoration Implementation Committee (COE, FWS, EPA, NPS, States of the Missouri River Basin and various stakeholders), 2005.

Mediator, water district valuation dispute (US Department of Justice, Department of Navy and local irrigation district), 2004.

Facilitator, Lowry Landfill Superfund site (EPA, State of Colorado, City of Denver and Waste Management Inc.) 2004.

Mediator, reservoir dispute, 2002

Mediator, reservoir ownership dispute, 2002

Mediator, irrigation ditch owners dispute (parties confidential). Joe facilitated discussions among co-owners of a ditch to resolve disputes concerning a land purchase agreement.

Program Facilitator/consultant, Water For People,.

Legal Counsel, water litigation.

Engineering consultant, water and rivers, 1972-1975

Water related presentations or associations:

- *Engineers' Guide to Arbitration, Mediation and Conflict Resolution*, co-presenter, American Council of Engineering Companies of Colorado, April 2009.
- Water track facilitator, *Sustainable Resources 2003* Conference, Boulder, CO., Oct. 2003.
- Registered Professional Engineer, State of Colorado, 1975 (practiced as Water Engineer from 1972-1977).
- Presenter, *Water Issues in Viet Nam*, American Water Works Assn., Annual Conference, Toronto, 1997.
- Facilitator, *Water Drainage Issues in Viet Nam*, Ha Noi, 1997 (joint effort of Water For People and Colorado State University).
- Program co-planner of the *Source Water Protection Conference* in Hue, Viet Nam, 1998.

OIL & GAS

Arbitrator, construction of oil & gas facility, 2013.

Panel Chair, Arbitration over midstream processing dispute, 2012.

Mediator, disputes over offshore drilling JOA and drilling problems, 2011.

Mediator, dispute over aquifer pollution during coal bed methane drilling.

Mediator, class action dispute over payment of royalties on gas wells, 2007-08

Mediator, dispute over nature of the interest in oil and gas properties granted, 2007

Panel Chair, Arbitration over gas compression dispute, 2006-2007.

Panel Chair, Arbitration over Exploration and Development Agreement dispute, 2006

Mediator, dispute over Joint Operating Agreement and accounting/bankruptcy issues, 2004.

Mediator, dispute over alleged breaches of a coal bed methane exploration and development agreement, 2004.

Mediator, coal bed methane agreement, 2002

Mediation – dissenting shareholder and valuation of reserves.

Mediation – dispute over gathering and processing. Joe mediated a dispute concerning the parties' rights to use of various components of a gathering and transmission system.

Legal counsel (1978-2001). Joe provided legal counsel in various disputes oil and gas disputes including disputes over exploration rights, conflicts between the surface and mineral estate, and natural gas re-pricing disputes.

NATURAL RESOURCES AND MINING

Facilitator among EPA and responsible party on CERCLA remediation planning for a mine site, 2013 (Washington State).

Facilitator for technical design process for mine site remediation. EPA, State of New Mexico, Chevron Mining and communities, 2012.

Facilitator among EPA, State of Colorado and local community groups on mill site remediation, 2012-13.

Arbitration, coal mining construction dispute, 2009.

Arbitration, Panel Chair, Mining Agreement dispute, 2003

Mediator, Joint venture dispute between mining and non-mining railway traffic, 2002

Legal Counsel (1978-2001). Joe was legal counsel for various entities in mining and mineral disputes including coal, precious metals (gold, silver, zinc), industrial minerals, exploration agreements, rights to geophysical data, option agreements, the validity of mining claims. As a result, Joe gained expertise in mining disputes including underground mining, mining location and claims, open-pit mining, exploration, royalty calculations, and transportation of minerals.

Natural Resources/Mining presentations or associations:

- *Improving ADR in Natural Resource and Energy Disputes*, Colorado Bar Natural Resource and Energy Section meeting, March 2004, Denver.
- *Negotiating and Drafting Agreements-Lessons from the Courthouse*, 41 Proceedings of the Rocky Mountain Mineral Law Institute 4-1 (1995).

ENERGY

Arbitrator, construction of oil & gas facility, 2013.

Arbitrator, power purchase dispute, 2013.

Arbitration panel chair, energy generation dispute, 2009.

Arbitrator, Geothermal resource dispute and valuation, 2007.

Arbitrator, Geothermal Power Sales Agreement dispute, 2005.

Arbitrator, Power Development and Sale Agreement, 2005

Arbitrator, Power Purchase and Sale Agreement, 2003

Settlement Counsel, Colstrip Power Plant Mining and Operational Litigation, Montana, 1997-98.

Settlement Counsel, Power Sales Dispute, Montana, 1996-98. *The Montana Power Company v. Puget Sound Energy*.

Energy related presentations or associations:

- *Guiding Institutions Through Conflict; Moving from Litigation to Mutual Gains Bargaining*, (Energy Dispute Model) American Bar Association, Dispute Resolution Section Conference, San Francisco, April, 2000.
- American Arbitration Association, Energy Panel.

DESIGN & CONSTRUCTION

Arbitrator, construction of oil & gas facility, 2013.

Arbitrator, design and construction of component buildings in a compound, 2012.

Settlement Counsel, design and construction dispute 2012.

Panel member, land development dispute, 2009.

Panel member, contract termination, construction delay and change condition disputes, 2009.

Mediator, 2009, construction activities on waster water treatment plan

Panel member, mining support and processing construction, 2009. Panel member, land development and construction dispute, 2009.

Panel member, government construction dispute, 2009.

Arbitrator, multifamily housing construction dispute, 2009.

Arbitrator, home renovation dispute, 2009.

Arbitrator, residential home construction and sale dispute, Colo., 2008.

Arbitrator, commercial site design dispute, Idaho, 2008.

Arbitrator, commercial construction dispute, payment and liens, Colorado 2008.

Mediator, dispute over deposits for home purchase, Colorado 2007.

Arbitrator, commercial dispute over delays, subcontract breach, Colorado, 2008.

Mediator, commercial construction and sale dispute, 2007.

Arbitration, commercial construction dispute, 2006 Arbitration, home construction dispute, 2006.

Arbitration Panel Chair, fiber optic cable dispute, 2004

Mediator, California business center

Arbitration Panel Chair, multi-family housing dispute, 2003

Mediator, Residential construction dispute, 2003.

Arbitrator, Residential construction dispute, 2003.

Arbitrator, hotel design and construction, 2002

Arbitrator, commercial office building design and construction, 2002

Mediator and arbitrator, construction disputes, 1997-present

Construction related presentations or associations:

- American Arbitration Association, Construction Panel, N.Y.
- CPR Institute for Dispute Resolution, Construction Panel, N.Y.
- Registered Professional Engineer, State of Colorado, 1975.
- *Engineers' Guide to Arbitration, Mediation and Conflict Resolution*, co-presenter, American Council of Engineering Companies of Colorado, April 2009.

TECHNOLOGY AND COMMUNICATIONS

Mediator, telecommunications/cell phone technology, 2007 (parties confidential). Joe was selected to mediate a dispute concerning cell phone technology.

Mediator, telecommunications, 2003

Arbitration Panel Chair, Communications Transmission Dispute, 2004

Mediator, telecommunications, 2000

Mediator, E-commerce, 2002

Mediator, software asset purchase, 2001

Settlement Counsel, technology leasing dispute, 2002

Technology and communication related presentations or associations:

- Presenter, *Using ADR in Intellectual Property Controversies*, ABA Litigation Section Roundtable, Merchant & Gould, Denver, CO., Jan., 2003.
- Co-author with EM Thiessen, *Beyond Win-Win in Cyberspace*, discussion of resolution of environmental disputes using "negotiation support systems" and facilitation, *The Ohio State Journal of Dispute Resolution* (15 Ohio S. J. of Disp. Res. 643 [1999]).

LAND USE, SUSTAINABLE COMMUNITIES & TRANSPORTATION

Facilitator, Denver Regional Council of Governments – Growth Management Policy Revision, 2008-09. Facilitated a steering committee and planners group in revision of the regional growth management policy.

Mediator, Land use and development dispute, 2006 (parties confidential). Joe served as mediator assisting local government and citizens in a Colorado mountain community resolve a pending court dispute over land use, development and public roads/assess.

Facilitator, Adams-Weld County Transportation and Planning, 2005. The Denver Regional Council of Governments asked Joe to plan and facilitate a meeting of county and municipal representatives to consider how collaborative planning efforts on growth and transportation could assist all parties.

Conflict assessor/facilitator, City of Centennial & Regional Council of Governments, Road closure facilitation, 2003. The Denver Regional Council of Governments and the City of Centennial asked Joe to assist with the resolution of a dispute involving a road closure and the resulting transportation problems. He conducted a conflict assessment, recommended a facilitated process, and undertook to determine whether a consensus building exercise could provide the parties with workable solutions to primary, secondary and emergency access to several Colorado communities.

Mediator, Jarbidge/Elko Nevada Public Lands Litigation, 2001. Joe mediated a consensus building process to determine, among other disputes, how public and local government access could be undertaken along historic roads in Nevada.

Land use related presentations or associations:

- *Urban Regional Governance: the challenges of voluntary and mandatory approaches*, co-presenter, 18th Rocky Mountain Land Use Institute Conference, March 2009.
- Colorado Office of Smart Growth, Intergovernmental Land Use Dispute Resolution Program, List of Qualified ADR Professionals.
- *Mediating Land Use Disputes*, lecturer, Colorado Municipal League 81st Annual Conference, Pueblo, CO., June 2003.
- Role play mediator, CBI-Lincoln Land Institute course entitled *Mediation Land Use Disputes*, Boulder – 2002, Denver - 2003
- Visiting Professor and role-play facilitator in the mock negotiation of the San Francisco Airport Runway Expansion Negotiations, *Advanced Negotiations Course*, Stanford Law School, Program on Mediation and Negotiation, April 2001.

EMPLOYMENT AND SHAREHOLDER DISPUTES

Mediation – wrongful termination and intentional infliction, 2007. Mediation of dispute over liability for and damages related to claims made for wrongful termination and infliction of emotional distress.

Mediation – non compete dispute (2007). Mediation of dispute between former employee and employer over terms and enforceability of a noncompete agreement.

Settlement counsel. Joe was asked by a corporation to assist in evaluation of claims by a former employee on claims of breach of employment agreements.

Arbitration – wrongful termination and §1983, 2003 (parties confidential). Joe served as arbitrator in a dispute concerning wrongful termination and discrimination claims.

Mediation - termination. Parties to a dispute asked Joe to mediation disputes over claims, among others for unpaid wages, constructive termination and attorney's fees.

Facilitation – medical group dispute. A hospital and group of practicing physicians asked Joe to facilitate discussions concerning workplace and contract disputes to help clarify the choices the parties had concerning improving or terminating their continuing employment and business relationships.

Mediation – dissolution of medical practice. A group of physicians asked Joe to mediation the terms of the breakup of their practice into two separate practicing groups.

Mediation – dissenting shareholder. Joe was asked to mediate a dispute over the value of dissenting shareholder rights pursuant to statute.

BUSINESS AND COMMERCIAL DISPUTES

Arbitrator, several commercial contract disputes, 2013 (commercial contract disputes).

Mediator, partnership dissolution, 2012. Mediated the terms of a partnership dissolution and uses of intellectual property.

Mediator, promissory note dispute, 2009.

Arbitrator, franchise dispute, 2009.

Mediator – franchise dispute, 2007 (parties confidential). Mediation regarding the terms and method of franchise termination.

Mediator – financing and earnest money dispute 2007 (parties confidential). Dispute over entitlement to earnest money and interpretation of purchase agreement.

Arbitration – acquisition agreement 2003 (parties confidential). Joe served as arbitrator in a dispute over the alleged breach of an acquisition agreement and terms providing for continuing control and participation.

Arbitration – franchise agreement 2004 (parties confidential). Joe served as arbitrator in a case founded in claims of breach of a franchise agreement and lost profits claims.

Arbitration – franchise agreement 2002 (parties confidential). Dispute over terms of and termination of franchise agreement including injunctive relief.

Mediation and Settlement counsel. Joe has provided assistance to parties and litigants in a wide variety of business disputes as a mediator, an arbitrator, a court-appointed neutral, settlement counselor or legal counsel for parties. His cases include banking, joint ventures, franchising, medical professional practices, consultants, real estate, financing, and asset purchase transactions.

ADJUDICATIVE EXPERIENCE

On more than sixty occasions, Joe has been appointed as an arbitrator or a court appointed evaluator/special master. As a trial lawyer, he assisted clients in a wide variety of water, natural

resources and commercial cases in both state and Federal trial courts, and in appeals in the Supreme Courts of Colorado and Montana, in the U.S. Supreme Court, and in the U.S. 10th and 3rd Circuit Courts of Appeal.

EXPERIENCE IN ASSISTING ORGANIZATIONS

Capacity-building, Effectiveness & Evaluation, Facilitation

Facilitator, Executive Committee retreat in midst of internal conflict, national organization (name confidential), Washington DC., 2013.

Facilitator, 2013. Assisting a University College address internal conflicts.

Facilitating Large Groups, 2013. Trainer for the Colorado Judicial Department.

Facilitator, Land Conservation, 2011. Facilitated a land conservation NGO in the development of a five year strategic framework.

Facilitator, Longterm Care, Engaged to assist in a strategy update for large health care organization.

Facilitator, International Statistical Institute. Engaged to assist in strategy update.

Facilitator, Denver Regional Council of Governments, 2008-2009. Engaged to help Board members adopt a new urban growth management policy.

Facilitator, Colorado Historical Society, 2007. Joe helped design and facilitate a day long workshop aimed at exploring “What is American Indian Identity” among citizens, tribal spokespersons and educators.

Facilitator, Centennial Snow – Ice Task Force, 2007. Joe designed and facilitated a day long meeting among government agencies to help draft a strategic plan for coordinating snow removal in major storm.

Facilitator, Dean’s Diversity in Law Initiative, 2006-2007. Joe was selected by the two Colorado law schools to facilitate the development of a strategy for a multi-year program and process to increase the diversity in the Colorado legal environment.

Facilitator, Water For People, Program Strategy, 2006/07. Joe has been engaged under Inter-Mediation, to assist the design of Water for People’s India strategy for water and sanitation. This program will the development of changes to program operating concepts to bring work more in line with the newer thinking on the role of nongovernmental organizations from developed countries – moving away from short term projects to long term partnerships.

Facilitator, Water and Conflict Strategy, 2006 (parties confidential). Joe was engaged by a water users organization to assist them in developing an organizational strategy to address conflict over water and search for approaches that minimize litigation and maximize the opportunities for collaboration.

Facilitation – medical group dispute. A hospital and group of practicing physicians asked Joe to facilitate discussions concerning workplace and contract disputes to help clarify the choices the parties had concerning improving or terminating their continuing employment and business relationships.

Water For Africa, 2000-2002. Joe co-managed an EPA sponsored capacity building project with Eastern African NGOs working in urban settlements. As a NGO team member, he negotiated the principal grant, interviewed the potential sub-grantees, developed the selection

criteria, made and drafted the grant documents, participated in the monitoring and evaluation and facilitated the “lessons learned” workshop.

Manila, USAEP, 2003. Joe co-facilitated a capacity building workshop that fostered consensus on water and waste water treatment.

Water For People, 1998-to 2010. Joe was asked to develop programs and trainings on ‘Program Monitoring & Effectiveness,’ water strategies and other management issues including use of consultants and board training sessions.